IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

WP(C).No. 10903 of 2007(W)

PETITIONER:

SAPPHIRE TOURIST HOME, CANNON SHED ROAD, ERNAKULAM, KOCHI - 11, REPRESENTED BY K.K.FAIZAL, MANAGING PARTNER.

BY ADV. SRI.VIJAYAN. K.U.

RESPONDENTS:
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1. COMMERCIAL TAX OFFICER (WC & LT), OFFICE OF THE DEPUTY COMMISSIONER, COMMERCIAL TAXES, ERNAKULAM.

2. STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

3. DEPUTY COMMISSIONER (APPEALS), COMMERCIAL TAXES, ERNAKULAM.

BY GOVT.PLEADER SRI.MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C).No.10903 of 2007-W

Dated this the 29th day of March, 2007

JUDGMENT

The petitioner challenges Ext.P6 interim order passed by the third respondent on the stay application filed by it along with Ext.P5 appeal. The petitioner challenges Ext.P4 assessment order rejecting its claim for compounding and making best judgment assessment. The reason for not granting the benefit of compounding is that the petitioner did not file any application for the same, indicating its option to pay tax at compounding rate. The petitioner submits, no such application is necessary and it has paid the tax at compounded rate and that it being accepted without any objection, the respondents could not be permitted to take such a technical contention. The petitioner points out that during the year 2002-2003, without any formal application, compounding facility was extended to it. So, it prays, this time also compounding facility may be extended to it. In view of the above position, the petitioner should have been granted absolute stay.

2. I heard the learned Government Pleader for the respondents. The learned Government Pleader submitted that for every year there should be an exercise of option, in writing, to get the benefit of compounding facility and the fact that for some years the facility was extended without formal application will not absolve the liability of the petitioner. Going by Ext.P1, I find that there is mention of exercise of option by the petitioner which is

found to be in order and it was allowed. Admittedly, for the subsequent years there is no subsequent option revived. Therefore, best of judgment assessment was made. Since the matter is pending in appeal, I am not expressing any opinion on this finding. But, I find that going by the grounds taken, I do not feel that the direction issued under Ext.P6 is arbitrary or irrational warranting interference under Article 226 of the Constitution of India. The petitioner has been directed to pay only 50% of the balance tax. I find no reason to interfere with the same. But, the petitioner is granted time upto 16-4-2007, to pay the balance tax, and also time upto 30-4-2007, to furnish security for the rest of the amount.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

MS